IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6763 of 1986

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : YES

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : YES

SHAKTI VIJAY IRON & STEEL INDUSTRIES

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6763 of 1986

MR PV HATHI for Petitioner No. 1

MR SIRAJ GORI, AGP.for Respondent No. 1-4

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE D.A.MEHTA

Date of decision: 17/06/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

This is a petition under Article 226 of the Constitution of India. The petitioner has prayed for direction to the respondent authorities to grant sales tax incentive benefit to the petitioner under resolution dated 27/8/1980 (Annexure 'A') and 17/1/1982 respectively. The petitioner has also prayed for direction to the respondents to refund the amount of sales tax recovered from the petitioner before filing of the petition i.e. 29/12/1986.

2 The facts leading to the filing of the petition, as averred by the petitioner are as under :

The petitioner is a private firm, having set up its new factory in January 1981 for manufacturing M.S.Rounds, Flat and C.T.D. from steel scraps. The petitioner obtained necessary permanent registration on 28/8/1985 and thereafter purchased new machinery and started production of new unit at Heduva-Hanumant in Mehsana district which was notified as a backward area for the purpose of grant of sales tax incentives benefit and for cash subsidy. The petitioner's application for such benefit under the aforesaid scheme was not granted on the ground that the industry set up by the petitioner was not eligible for such benefit because it fell in the list of ineligible industries. Item No.24 of the said list reads as under :

"24. Re-rolling of steel, including stainless steel".

The petitioner, however, contended that the petitioner was only engaged in the business of rolling of Steel Scrap and therefore, it did not amount to re-rolling of Steel. The second contention raised by the petitioner is that the list of ineligible industries was modified subsequently by a Government Resolution dated 6/5/1986 and that in the said list (i.e. Annexure 'B' to the resolution dated 6/5/1986) item Re-rolling of Steel did not occur and therefore, even the industries engaged in re-rolling of stainless steel became eligible for obtaining sales tax incentive benefit under the Scheme known as Sales Tax Incentive Scheme, 1986. The said Scheme came into operation with effect from 1/4/1986 and therefore, the industries which commenced their production on or after 1/4/1986 became eligible for benefits which were denied to the similar industries which commenced their production before 1/4/1986.

3 At the hearing today, learned Advocate Mr.P.V.Hathi has reiterated the submissions made in the

petition, on the question of interpretation of item No.24 in list of ineligible industries annexed to the resolution dated 17/1/1982 and also regarding the plea of discrimination against the industries which commenced production before 1/4/1986.

4 In reply Mr.Siraj Gori, learned Assistant Government Pleader for the respondents has submitted that since the raw material used by the petitioner was not steel bars but steel scrap, process of such raw material necessarily amounted to re-rolling of steel and therefore covered by Item No.24 in the list of ineligible industries. As regards challenge on the ground of discrimination, it is submitted that whether the particular industry be treated as eligible for sales tax incentives or not and the date from which effect is to be given is a matter of policy and that the petitioner had no legal right, much less a fundamental right, to get the benefit of sales tax deferment or any other similar benefit merely on the ground that the industries which commenced their production subsequently were granted such benefit.

5 Having heard learned Counsel for the parties, we find considerable substance in the submissions made by learned Assistant Government Pleader.

Item No.24 of the list of the ineligible industries read as under :

"24. Re-rolling of steel, including stainless steel".

The petitioner was admittedly using steel scrap as raw material and as stated in the petition 'steel-scrap' means small detached pieces of something, i.e. unuseful worn-out and broken articles of steel. According to the petitioner, raw material for the petitioner firm was only steel scrap obtained from different local sources only. Hence, the raw materials used by the petitioner were at one point of time steel products which were utilized by other industries and after being worn-out and broken, they were disposed of as scrap. Those articles therefore had already undergone the process of rolling and the process employed by the petitioner on those products subsequently necessarily amounted to "re-rolling of steel". The contention that item No. 24 did not use the words "Rolling Mill using Steel scrap" is merely begging the question because when the steel scrap is used as raw material, the process would not ordinarily be called rolling but it would be

called "re-rolling".

Similarly the contention that industry set-up by the petitioner was considered as rolling Mill by G.E.B. for charging electricity duty is also misconceived. It does not show that G.E.B. had two classes of industries - 'Rolling Mill' & 'Re-rolling Mill'. For the purpose of electricity duty there may not be any significance of the question whether the industry is engaged in rolling of steel or re-rolling of steel.

For the aforesaid reasons there is no substance in the first contention.

6 As regards the plea of discrimination, admittedly when the petitioner company commenced production in August, 1985 the industries engaged in re-rolling of steel were ineligible for the incentive benefit scheme. It is not the petitioner's case that the industries similarly situated as the petitioner, which had commenced commercial production before 1/4/1986, were granted benefit of the sales tax incentive scheme. Article 14 requires equal treatment for equals. When the sales tax incentive scheme specifically excluded the industries engaged in Re-rolling of Steel for the period upto 31/3/1986 such industries constituted a separate and different class. Such industries were not treated as ineligible under the Scheme of Sales Tax incentive as contained in the Government Resolution dated 6/5/1986 which came into force from 1/4/1986.

As per the settled legal position it is open to the policy making body like the legislature and the Government exercising the powers of delegated legislation have wide latitude in choosing the subjects of taxation or grant of exemptions and also to specify the relevant dates with effect from which such tax is to be levied or exemptions are to be granted. Hence, there is no substance in the second contention either.

7 Before parting with the matter we may also state that at the time of admission of this petition it was ordered to be heard with SCA No.836/83. Learned Assistant Government Pleader has invited our attention to the fact that the said petition has also been dismissed by judgment and order dated 19/6/2003 with number of other petitions.

8. In view of the above discussion, the present petition is rejected. Rule is discharged with no order as to costs. Interim relief granted earlier stands

vacated.

(M.S.Shah,J)

(D.A.Mehta,J)

m.m.bhatt